

THE HONORABLE RONALD B.
LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOHN LENNARTSON, RITA
ANDREWS, CASSIE ASLESON, SUSAN
SHAY NOHR, on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

PAPA MURPHY'S HOLDINGS, INC. and
PAPA MURPHY'S INTERNATIONAL
L.L.C.,

Defendants.

No. 3:15-cv-05307-RBL

**DECLARATION OF KEN SPONSER IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

I, Ken Sponsler, declare as follows:

1. I am the Senior Vice President of CompliancePoint, Inc. ("CompliancePoint"). CompliancePoint is a global professional services firm specializing in consumer contact compliance consulting and audit services, located in Duluth, Georgia. CompliancePoint is a wholly-owned subsidiary of PossibleNOW, Inc.

2. I was contacted by Jeffrey DeGroot of DLA Piper, counsel for the Defendants, Papa Murphy's Holdings, Inc. and Papa Murphy's International, L.L.C. ("Papa Murphy's") in the case captioned as *Lennartson et al. v. Papa Murphy's Holdings, Inc. et al.*, Case No. 3:15-cv-05307-RBS (W.D. Wash.) to assess the ability to ascertain the putative class members in this

DECLARATION OF KEN SPONSER IN
SUPPORT OF DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION - 1
No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800

1 case and also provide my own opinions concerning the availability of data with which one could
2 reliably and accurately identify the names and addresses of the subscribers and authorized users
3 of telephone numbers at a specific time in the past, if one has only the telephone number, the
4 telephone company name, and the date of dial associated with each number.

5 3. I reserve the right to supplement this declaration as new information becomes
6 available.

7 **I. Qualifications**

8 4. I have over seventeen years of operational experience in business-to-business and
9 business-to-consumer global direct marketing compliance matters. I have personally conducted
10 dozens of onsite compliance assessments, gap analyses, and risk assessment studies. I have
11 assessed numerous call center operations on behalf of potential seller-clients as a due diligence
12 measure prior to sellers entering into contractual relationships for services. I have provided expert
13 reports in several TCPA-related matters including matters involving SMS/text messaging and
14 issues related to consent. I have also been retained as an expert witness in numerous cases
15 involving ascertainability of historical class members. CompliancePoint, Inc.'s consulting
16 practice founded by me, also provides historical call data compliance and wireless identification
17 services on behalf of law firms and corporate clients. These services include call data audits in
18 support of compliance monitoring and enforcement efforts. CompliancePoint's parent company,
19 PossibleNOW, Inc., is a provider of mobile telephone identity services. PossibleNOW has
20 maintained historical records of mobile telephone portability status since the beginning of U.S.
21 portability implementation in late 2003, wireless portability lists are updated daily and
22 PossibleNOW's record maintenance allows for historical calling records to be compared to the
23 applicable wireless portability list given the date(s) of the call record. Finally, as the Vice
24 Chairman of the board and member of the executive committee of the National Board of
25 Directors of the Professional Association of Customer Engagement ("PACE", formerly the
26 American Teleservices Association) I interact with hundreds of corporate compliance

1 professionals and companies/providers involved in consumer contact operations. A copy of my
2 current curriculum vitae (“CV”) is attached hereto as Exhibit A. My compensation is not
3 dependent upon the outcome of this matter.

4 5. My familiarity with consumer contact compliance industry standards began in
5 early 2000. After my transition from 27 years of military service, I worked as a project manager
6 for the development of a software product called, “The DNCSolution”. This product enables
7 sellers and telemarketers to comply with federal and state Do Not Call laws by allowing
8 companies to check calling campaign lists against all federal and state Do Not Call lists,
9 company-specific Do Not Call lists, as well as wireless lists. My work on this project led to my
10 study of federal and state Do Not Call laws as well as exemption criteria. As the “DNCSolution”
11 product evolved to comply with more restrictive state laws, I realized the need for a consultative
12 service, and started a compliance consulting practice in 2005 to help clients understand how these
13 laws applied to them.

14 6. CompliancePoint’s compliance consulting practice revolves around assisting
15 sellers, service providers, and other related third parties to understand consumer contact
16 standards and regulations and to implement operational procedures to ensure compliance with
17 such standards and regulations. I have developed practices, systems, and training to ensure such
18 compliance. These include compliance officer training programs, call data compliance audits, as
19 well as seller-service bureau risk mitigation consulting.

20 7. CompliancePoint’s consulting practice monitors ever-changing federal and state
21 regulatory requirements, as well as civil actions and published materials from industry experts.
22 My years of experience in these matters involve a host of industry verticals such as financial
23 services, insurance, retail, home alarm services, satellite and cable services, teleservices, vacation
24 and cruise lines, lead generation, and the career college industries. CompliancePoint provides
25 compliance retainer services for over five dozen firms, including several Fortune 500 companies.

1 8. I have assisted many clients to implement compliance standards in various due
2 diligence areas including the development of:

- 3 • Corporate compliance governance procedures
- 4 • Compliance review committee charters
- 5 • Compliance policy and procedure manuals
- 6 • Compliance training and testing materials
- 7 • Escalation policy and procedure
- 8 • Critical task risk assessment analysis
- 9 • Agent quality assurance and compliance monitoring methodologies
- 10 • Compliance, record keeping and monitoring and enforcement contractual
- 11 provisions

12 9. I have provided training and instructions relative to consumer contact compliance
13 in the following circumstances:

- 14 • Direct to consumer marketing compliance officer training courses for compliance
- 15 staff and corporate legal departments
- 16 • Call center agent training regarding corporate Do Not Call policies
- 17 • College campus admissions representative training regarding telemarketing and
- 18 corporate compliance
- 19 • Customer compliance awareness training for dialer technology providers
- 20 • Trade association compliance seminar presentations.

21 10. Additionally, I have been retained to monitor compliance with court orders or
22 settlements in the following instances:

- 23 • Monthly post-call data and call abandonment audit analysis and reporting
- 24 • Ongoing announced and unannounced call center audits
- 25 • Consumer call attempts monitoring to prevent over-dialing
- 26 • Call time restriction compliance monitoring

- Admissions agent truthful disclosure monitoring.

11. I provided consulting services to government and military organizations implementing U.S. Army modularity design and organizational changes. I have undergone specialized training at the U.S. Army Command Sergeant Major Course (Graduated with Honors) and the Advanced Non-Commissioned Officers' Course (Distinguished Graduate). I retired from the U.S. Military after achieving the highest enlisted rank of U.S. Army Command Sergeant Major, of the 3rd Infantry Division, a 23,400-man elite combat team.

12. On a regular basis, I conducted compliance-related webinar presentations to PossibleNOW and CompliancePoint customers regarding operational compliance subject matter such as:

- Compliance with the TCPA final rules regarding calls/texts to wireless numbers
- Federal and state enforcement and settlement action lessons learned
- Changes to federal and state consumer contact laws
- Global compliance and privacy updates
- Trends in the mobile marketplace
- Do Not Call and Call Abandonment safe harbor compliance
- Telemarketer registration and bonding requirements
- Do Not Call compliance data auditing lessons learned
- Record keeping lessons learned from the Civil Investigative Demand
- Federal and state established business relationship exemption criteria
- Call time restriction compliance
- Federal and state disclosure requirements
- How to prepare and respond to federal and state investigative demands.

13. I have been asked to provide presentations and colloquies and am a frequent speaker at industry events, including but not limited to: PACE Annual Convention and Washington Summit; Direct Marketing Association Teleservices Conference; College of

Information Assurance Professional's Governance; Risk and Compliance Summit; Noble Users' Conference; The Association of Private Sector Colleges and Universities Annual Conference (APSCU); The Customer Engagement Management (CEM) Conference; Dish Network's Annual Retailer Conference; Campus Management Corporation (CMC) Annual Conference; Life Office Management Association (LOMA); Quarterly Compliance Focused Webinar Presentations; LeadsCon annual conference; and the Allied Solutions financial services member conference.

14. I hold the following Registrations, Licenses, and Certifications: Customer Engagement Certified Professional (CECP) by the Professional Association for Customer Engagement (PACE); Certified Information Privacy Professional (CIPP/US) by the International Association of Privacy Professionals (IAPP); and Certified American Teleservices Association Self-Regulatory Organization Auditor (ATASRO).

15. I have received the following professional recognition for my work in this field:

- a. PACE 2016 Pioneer Award. This award is presented annually to a member who has demonstrated pioneering thought leadership and commitment to the goals of the association and the industry. I received this award for the development of the Customer Engagement Compliance Professional Certification (CECP) program. This professional certification provides education and standards for the consumer contact compliance professional, including corporate compliance officers and attorneys. To date, over seventy professionals have earned certification after participating in the extensive study program and subsequently successfully passing a comprehensive two-hour examination. The certification is awarded by the Professional Association of Customer Engagement (PACE).
- b. PACE Chairman's Award for Leadership (2014).
- c. Eighteen separate personal awards by the U.S. Army, including the Legion of Merit.

II. Summary of Expert Experience

16. In the last four years, I have been qualified as an expert in Federal District Court and have been retained to provide deposition testimony as an expert in the following matters:

Horton v. Cavalry Portfolio Svcs., No. 3:13-cv-00307-JAH-WVG (S.D. Cal.); *Shamann v. Monex Credit Co.*, Arbitration Proceeding JAMS Reg. 1200041941; *Molnar v. NCO Financial Systems, Inc.*, Nos. 3:13-cv-00131 and 3-13-cv-00685 (S.D. Cal.); *Hooker v. Sirius XM*, No. 13-cv-0003 (E.D. Va.); *True Health Chiropractic, Inc. v. McKesson Corp.*, No. 13-cv-02219 (N.D. Cal.); *Bridge v. Credit One Bank*, No. 2:14-cv-01512 (D. Nev.); *Raffin v. Medicredit, Inc.*, No. 2:15-cv-04912 (C.D. Cal.); *Keim v. ADF Midatlantic, LLC et al.*, No. 9:12-cv-80577 (S.D. Fla.); *Marcus v. CVS Pharmacy, Inc.*, No. 3:15-cv-00259 (D. N.J.); *Tomeo v. Citigroup, Inc. and CitiMortgage, Inc.*, No. 1-13-cv-04046 (N.D. Ill.); *Tillman v. Ally Financial, Inc.*, No. 2:16-cv-00313 (M.D. Fla.); and *Slovin v. Sunrun, Inc. et al.*, No. 4:15-cv-05340 (N.D. Cal.).

I also provided trial testimony in federal court in the matters *United States of America v. DISH Network*, No. 3:09-cv-03070 (C.D. Ill.) and *ADT Security Services Inc., v. Security One International*, No. 11-cv-05149 (N.D. Cal.).

17. Materials reviewed and relied upon:

I have reached the conclusions set forth below based on my review of Anya Verkhovskaya's expert report and the materials cited by Ms. Verkhovskaya, as well as other case materials made available to me listed in Exhibit C.

III. Methodology

18. In drafting this report and rendering my opinions in this case, I considered the above documents made available to me by Papa Murphy's. I further relied on my experience in the consumer engagement industry in general as well as my compliance work with dozens of companies, including specifically with regard to TCPA compliance. I stay current with industry

1 developments—both in terms of technology and compliance—and this has also informed my
2 opinions.

3 **IV. Statement of Opinions:** It is my opinion that Papa Murphy’s business practices were and
4 are to send text messages only to consumers who have opted in to receive them and consumer
5 opt-outs are honored in accordance with regulatory requirements, as well as Mobile Marketing
6 Association and CITA (the wireless association) standards. It is also my opinion that the names
7 and addresses of individuals, who allegedly received the text messages at issue in this case,
8 cannot reliably be identified through objective or administratively feasible means, as there is no
9 reliable method to determine historical authorized users or subscribers of all of the mobile
10 telephone numbers that would be included within the putative class definition proposed in the
11 First Amended Class Action Complaint. This is particularly problematic here where the text
12 messages at issue were allegedly received by proposed class members years ago and the relevant
13 time period for the putative class stretches back to 2013—a period of over four years. It is my
14 understanding that the named Plaintiffs seek to represent the following class:

15 **National Class**

16 All persons or entities in the United States and its Territories who received one or more
17 text message advertisements from or on behalf of Defendants between October 16, 2013,
18 and June 15, 2015.

19 Furthermore, Plaintiff Asleson and Plaintiff Nohr also seek to represent a sub-class, the

20 **Washington Class**

21 All persons or entities in Washington who received one or more text message
22 advertisements from or on behalf of Defendants between October 16, 2013, and June 15,
23 2015.

24 **V. Plaintiff Backgrounds:**

25 19. John Lennartson (one of the named Plaintiffs) alleges he received a text message
26 on his mobile telephone from short code 904-21 on or around April 6, 2015. Plaintiff Lennartson
presents as evidence only some screenshots of one or more unknown mobile telephone(s)
showing text messages from 904-21 informing the receiver of the text message of an available
discount for a certain type of pizza at participating Papa Murphy’s locations and to reply STOP

1 to end the receipt of such messages. The screenshot of this unidentified mobile telephone does
 2 not show the telephone number associated with it. Plaintiff Lennartson claims that he received at
 3 least 26 such texted coupon alerts and that eight of them were received after the original
 4 Complaint in this action was filed. Plaintiff Lennartson does not state when he opted in to receive
 5 such messages, nor does he state when he opted out of receiving additional such text messages,
 6 or if indeed he ever did.

7 20. Rita Andrews (one of the named Plaintiffs) states only that Papa Murphy's
 8 obtained her telephone number and began transmitting text message advertisements after October
 9 16, 2013.

10 21. Cassie Asleson (one of the named Plaintiffs) states only that Papa Murphy's
 11 obtained her telephone number and began transmitting text message advertisements after October
 12 16, 2013.

13 22. Susan Shay Nohr (one of the named Plaintiffs) states only that she received text
 14 message advertisements from Papa Murphy's.

15 **VI. Opinion One:** Papa Murphy's SMS/texting business and operational practices dictated
 16 and continue to dictate that texts will ONLY be initiated to consumers who have specifically
 17 opted in to the texting program(s).

18 **a. Facts in Support:** According to the Declaration testimony of Andrew Brawley,
 19 Email and Mobile Marketing Manager at Papa Murphy's International, L.L.C.,
 20 consumers can only be included in a Papa Murphy's texting program if they take
 21 specific actions to opt in.¹ This can be accomplished in one of two ways. These
 22 include consumers texting into a Papa Murphy's short code as well as signing up for
 23 the texting program/promotion through the Papa Murphy's website
 24 (<https://www.papamurphys.com/>). The consumer text-to-short-code-option would
 25 appear in Papa Murphy's advertisements on media such as coupons, flyers, print
 26

¹ Declaration of Andrew Brawley, September 24, 2015, ¶ 5, 14-20 and 1-21.

media, and so on. Papa Murphy's did not purchase lead lists, perform any type of referral program or use any data mining services to build or add to SMS/text recipient lists.² Also, as a matter of policy, Papa Murphy's did not and will not add consumer telephone numbers to any SMS/texting list simply because customers provided their telephone number for any other purpose.³ Consumers were and are only included in the SMS/text programs when they opted in (expressed a desire) to receive such texts. Additionally, and in accordance with regulatory as well as MMA and CITA guidelines, Papa Murphy's provided for and honored any consumer's request that further texts cease.

VII. Opinion Two: The available SMS/text records in this case do not indicate whether intended recipients actually received the message.

- a. **Facts in Support:** The SMS/text related data sheets that have been produced and that I have reviewed do not provide definitive information regarding which intended recipients of Papa Murphy's text messages actually received them successfully. There are numerous reasons that text messages might not be received by the intended recipients on their mobile device.
- b. Consumers are under no obligation to report changed telephone numbers to Papa Murphy's; there exists no definitive evidence that an analysis of Papa Murphy's Customer Relationship Management ("CRM") database to identify mobile telephone numbers means that any texts were received by those consumers. Consumers themselves could direct the carrier to turn off the text messaging functionality on their mobile telephones.
- c. In addition to the facts above, there are other factors that can impact whether a text can be delivered successfully. Text messaging works in a fairly complex chain involving several SMS aggregator, connectivity, and number formatting

² Id., ¶ 5, 1-3.

³ Id., ¶ 3, 7-8

1 requirements. The message may first be sent to an aggregator, which can sometimes
2 cause delays, especially if there are technical issues or maintenance. Local towers
3 and carriers may also experience technical difficulties, which can result in the end-
4 user not successfully receiving a message.

5 d. Many consumers today use pre-paid or “burner” phones such as those available for
6 purchase at any number of retail stores like Walmart, etc. Purchasers of pre-paid
7 services purchase minutes and data. Usage of the device through texts/calls etc. debit
8 the available minutes. When the pre-paid minutes are used up, messages will not be
9 delivered. Consumers must recharge their accounts in order for service to resume.

10 e. Carriers also maintain a so-called “blacklist”, which is an internal list that carriers
11 maintain for their subscribers, who have informed them that they do not wish to
12 receive certain or any text messages. In the industry, this “blacklist” is also referred
13 to as a carrier opt-out.

14 f. Intended recipients may also have the ability to “block” messages from specific
15 senders. This is a common option available to many consumers. As a matter of fact,
16 my professional and personal experience shows that many consumers sign up with
17 retailers to receive the discount-SMS and as soon as they have received such, block
18 the retailer’s number on their cellular device. If the consumer decides to block future
19 texts or calls from a caller/initiator, then the hand set or mobile device does not
20 receive the text or call. In my experience, many text message service aggregators
21 also inform customers or users of the service that “[t]here can be no assurances that
22 (a) the Services will be accepted by any or all of the Carriers, or (b) that any or all
23 of the Carriers will maintain connectivity with our service”. These contractual
24 limitations offer additional insights into the question of whether the relevant text
25 messages may not have been forwarded by the carrier and may not have been
26

received by every mobile telephone number in Papa Murphy's texting campaign spreadsheets relevant to this case.

- g. Finally, SMS/text aggregators typically do not have contractual relationships with all of the over 700 carriers in the US. Aggregators are a vital link in the connectivity chain from message initiator through the aggregator, to the carrier and finally to the consumer mobile device. Aggregators work with carriers in order to ensure messages are "addressed" correctly so that they are routed to the correct carrier as well as ensuring that the message content/opt-out mechanisms and so on, meet the carrier's requirements. While aggregators typically have agreements in place with all of the major carriers, which would account for roughly 85 percent, they may not have agreement with many of the smaller carriers. In those cases, messages will not be delivered.

The evidence is clear that all intended recipients would definitely not have received texts.

VIII. Opinion Three: Papa Murphy's SMS/text related data sheets do not reveal sufficient information by which to reliably identify recipients or intended recipients of the alleged SMS/text messages at issue.

- a. **Facts in Support:** Papa Murphy's SMS/text messaging offers to its consumers required very little information. Consumers were only asked to provide first and last name, date of birth and phone number. However, as indicated in a summary analysis of the Papa Murphy SMS/text spreadsheets in evidence, the data elements provided by consumers are often missing key and essential information needed to identify intended recipients. In many cases, the information that was provided is incomplete or appears to be very likely false or inaccurate.

Data Sheet PM0000381

Total # of rows: 18,637

of rows that have any entry in "first name", initial only or more: 3,343

of rows that have any entry in “last name”, initial only or more: 5,254

21 entries: last names of Smith, no first name.

Examples:

ID	first_name	last_name	Birthdate	First name provided is the same as ph # provided
13976621	2177614993	amber	12/31/1969	
5434238	A	V	0000-00-00	First name provided is the same as ph # provided
12417916	t	schn	12/31/1969	
7862082	rv	atk	0000-00-00	
5434206	S	B	0000-00-00	
7543351	s	a	0000-00-00	
11354124	s	n	12/31/1969	
5432741		J	0000-00-00	
12526305	J	F	12/31/1969	
13715663	B	M	12/31/1969	
8688463	Sue	Rpss	0000-00-00	
14088187	M	r	12/31/1969	
13343753	K	T	10/22/2014	
4911872		bs	0000-00-00	
1 4911278		Smith	0000-00-00	
2 4157953		Smith	0000-00-00	
3 4911394		Smith	0000-00-00	
4 4911460		Smith	0000-00-00	
5 4911765		Smith	0000-00-00	
6 5431649		Smith	0000-00-00	
7 5431692		Smith	0000-00-00	
8 5431703		Smith	0000-00-00	
9 5431711		smith	0000-00-00	
10 5431736		Smith	0000-00-00	
11 5431802		Smith	0000-00-00	
12 5431903		smith	0000-00-00	
13 5432251		Smith	0000-00-00	
14 5432271		smith	0000-00-00	
15 5432458		SmIth	0000-00-00	
16 5432532		Smith	0000-00-00	
17 5432578		Smith	0000-00-00	
18 5432604		Smith	0000-00-00	
19 5432756		Smith	0000-00-00	
20 5432821		Smith	0000-00-00	
21 5433118		Smith	0000-00-00	
13443583	c	c	12/31/1969	First name provided is the same as ph # provided
5431680		Williams	0000-00-00	

Data Sheet PM0000554

Total # of rows: 58, 526

of rows that have any entry in “first name”, initial only or more: 32,828

of rows that have any entry in “last name”, initial only or more: 38,625

63 entries last names of Smith, no first name.

6 entries last name initial “b” or “B”, no entry for first name

Examples:

	ID	first_name	last_name	birthdate
	11963966	dust	off	12/31/1969
	6266280		Superstar	0000-00-00
	13176437	Thomas	The Great	12/31/1969
	11295115	ben	thebadass	12/31/1969
	14193747	Jon	tomorrow	12/31/1969
	6268062		woman	0000-00-00
	13226552	Tom	TRUE	12/31/1969
	6275792		TRUE	0000-00-00
	12812497	Deena	Zook	12/31/1969
	13365416	gary	zook	12/31/1969
	6564736	Tracy	Zook	0000-00-00
	6271415		Zook	0000-00-00
1	6265642		Smith	0000-00-00
2	6265679		smith	0000-00-00
3	6266170		smith	0000-00-00
4	6266589		Smith	0000-00-00
5	6266707		Smith	0000-00-00
6	6266818		smith	0000-00-00
7	6266838		Smith	0000-00-00
8	6266841		Smith	0000-00-00
9	6266939		Smith	0000-00-00
10	6267145		smith	0000-00-00
11	6267356		Smith	0000-00-00
12	6267478		Smith	0000-00-00
13	6268249		Smith	0000-00-00
14	6268264		smith	0000-00-00
15	6268470		Smith	0000-00-00
16	6268622		Smith	0000-00-00
17	6268778		Smith	0000-00-00
18	6268779		Smith	0000-00-00
19	6268822		Smith	0000-00-00
20	6268917		smith	0000-00-00
21	6269117		Smith	0000-00-00
22	6269336		Smith	0000-00-00
23	6269706		Smith	0000-00-00
24	6269788		Smith	0000-00-00
25	6269873		Smith	0000-00-00
26	6269884		Smith	0000-00-00
27	6269885		Smith	0000-00-00
28	6269983		Smith	0000-00-00
29	6270273		Smith	0000-00-00
30	6270309		Smith	0000-00-00

	ID	first_name	last_name	birthdate	
1	31	6270470		Smith	0000-00-00
2	32	6270668		Smith	0000-00-00
3	33	6270878		Smith	0000-00-00
4	34	6270886		smith	0000-00-00
5	35	6271289		Smith	0000-00-00
6	36	6271357		smith	0000-00-00
7	37	6271381		Smith	0000-00-00
8	38	6271444		smith	0000-00-00
9	39	6271554		Smith	0000-00-00
10	40	6271794		Smith	0000-00-00
11	41	6272181		Smith	0000-00-00
12	42	6272195		Smith	0000-00-00
13	43	6272336		smith	0000-00-00
14	44	6272622		Smith	0000-00-00
15	45	6272869		Smith	0000-00-00
16	46	6273037		Smith	0000-00-00
17	47	6273088		Smith	0000-00-00
18	48	6273174		Smith	0000-00-00
19	49	6273403		Smith	0000-00-00
20	50	6273598		Smith	0000-00-00
21	51	6273704		smith	0000-00-00
22	52	6273746		Smith	0000-00-00
23	53	6274529		Smith	0000-00-00
24	54	6274611		Smith	0000-00-00
25	55	6274630		smith	0000-00-00
26	56	6274671		Smith	0000-00-00
	57	6274782		Smith	0000-00-00
	58	6274864		smith	0000-00-00
	59	6275009		Smith	0000-00-00
	60	6275043		Smith	0000-00-00
	61	6275352		Smith	0000-00-00
	62	6275949		Smith	0000-00-00
	63	6276076		Smith	0000-00-00
					On this spreadsheet alone, 63 entries with no first name, last name Smith, which could be true or not and if true, impossible to ascertain the actual person.
		6273083	Carl	Smith II	0000-00-00
		6274872		Smith II	0000-00-00
		13426817		3	12/31/1969
		13893766		9	12/31/1969
		7449853		4255184693	0000-00-00
					Last name same as the cell phone # provided

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DLA Piper LLP (US)
 701 Fifth Avenue, Suite 7000
 Seattle, WA 98104-7044 | Tel: 206.839.4800

	ID	first_name	last_name	birthdate	
	12586716	bryan	0ertl	12/31/1969	Last name starts with a zero, not a capital O
	10979313	Heather	DueÃ±as	12/31/1969	Last name includes unusual characters
	6273164		6615 Commercial Ave	0000-00-00	
	14448580	Cody		12/22/2014	
	12209483	Df0f1		12/31/1969	
	14609986	Dianne		1/1/2015	
	6272359		ch	0000-00-00	
	6272245		E	0000-00-00	
	6270808		fu	0000-00-00	
	6268791		G	0000-00-00	
	6269040		g	0000-00-00	
	6267400		G.	0000-00-00	
	7909379	vickie	glrnn	0000-00-00	
	6265966		H	0000-00-00	
	6268310		In	0000-00-00	
	6271574		K	0000-00-00	
	12397197	t	ly	12/31/1969	
	6276068		Ko	0000-00-00	
	6267703		m	0000-00-00	
	6271723		M	0000-00-00	
	6272094		M	0000-00-00	
	12742928	A	Mre	12/31/1969	
	6270258		O	0000-00-00	
	6268259		P	0000-00-00	
	6272426		P	0000-00-00	
	6269604		Pattterson	0000-00-00	
	6268896		person	0000-00-00	While it certainly is possible that there are persons whose last name is "person", it is highly likely that this is just a take-off on the word 'person'
	6270466		Person	0000-00-00	While it certainly is possible that there are persons whose last name is "person", it is highly likely that this is just a take-off on the word 'person'
	6270483		Person	0000-00-00	While it certainly is possible that there are persons

DECLARATION OF KEN SPONSLER IN SUPPORT
 OF RESPONSE TO MOTION FOR CLASS
 CERTIFICATION - 16
 No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
 701 Fifth Avenue, Suite 7000
 Seattle, WA 98104-7044 | Tel: 206.839.4800

ID	first_name	last_name	birthdate	
				whose last name is "person", it is highly likely that this is just a take-off on the word 'person'
6265753		R	0000-00-00	
6268772		R	0000-00-00	
6272576		R	0000-00-00	
6273086		Robbbins	0000-00-00	
14281537	Haroldw59	Weber	12/31/1969	
6270382		S	0000-00-00	
6276025		s	0000-00-00	
10962274	iuli`	sd`	12/31/1969	Last and first name include unusual characters
6272177		Sweet	0000-00-00	
6272256		Torrison	0000-00-00	
6266946		W	0000-00-00	
6276019		W	0000-00-00	
6265905		W.	0000-00-00	
8932172	Anne	AuvÃfÂ©	0000-00-00	Last name includes unusual characters
6271527	sarah	courtneyluvsmela@hotmail.com	0000-00-00	

Data Sheet PM1015530

Total # of rows: 73,792

of rows that have any entry in "first name", initial only or more: 26,134

of rows that have any entry in "last name", initial only or more: 31,620

Examples:

ID	first_name	last_name	Birthdate	
4899224		55346	12/31/1969	
4591366	Nicole	0'Connor	12/31/1969	Last name starts with a zero, not a capital O
14119522	rebecca	TRUE	12/31/1969	

b. While consumers interested in taking advantage of receiving a coupon for Papa Murphy's products entered a mobile telephone number, the vast majority did not enter any information in the other fields, such as first and last name, birthdate (mm/dd, plus an unchecked box for the consumer to check to confirm he or she is over 18). It cannot be determined if any of these provided names are true and accurate. From my own personal experience and that of my family and friends, I am aware that quite a few people are uncomfortable providing their true and correct names on the Internet to receive a discount for, as in this case, pizza. This phenomenon is also supported by post-call data analyses I have been involved in as part of CompliancePoint's data auditing services. Additionally, Papa Murphy's did not attempt or even provide a means for consumers interested in receiving SMS/text messages to provide a business or residential address.

IX. Opinion Four: Ms. Verkhovskaya's opinion (§§ 32-39) that members of the two classes in this case can be reliably identified is unsubstantiated and pure conjecture. Furthermore, in my opinion described below, it is impossible to accurately determine the identity of the regular users of mobile telephones relevant to the class periods.

Facts in Support: In paragraph 33 of Ms. Verkhovskaya's report, she describes a proposed method of identifying proposed class members by using a "reverse-append" service through Lexis Nexus. In relevant part, Ms. Verkhovskaya states "The resulting output file provides a comprehensive report of subscribers of the telephone numbers, including name, address, and associated date ranges." Ms. Verkhovskaya does not describe the elements contained within this "comprehensive" report or the data sources used to create it including the reliability thereof, or the process by which this data is produced. When differing sources report dissimilar information regarding the same telephone number which source is used and why? Which sources have more weight than others and why? What is the proven reliability of this process? By her own admission,

1 Ms. Verkhovskaya indicates the resulting report will identify “subscribers”. However,
2 based upon my experiences in post call data analysis as well as wireless identification
3 services, many of the mobile telephone numbers were provided by regular or “authorized
4 users” of the telephones who are NOT subscribers and therefore would not be identified
5 at all or misidentified. I explain in other sections of this report other factors that severely
6 impact the accuracy and reliability of Ms. Verkhovskaya’s proposed method for
7 identifying proposed class members.

8 a. Every mobile telephone number in Papa Murphy’s CRM system is provided by
9 consumers, many of whom were interested in receiving discounts for Papa Murphy’s
10 products; Papa Murphy’s only collects contact information (and collected during the
11 relevant time periods) from consumers who initiate an inbound text to a Papa
12 Murphy’s short code or go on Papa Murphy’s website and sign up and agree to share
13 their contact information with Papa Murphy’s. My review of all available case-
14 related materials reveals that during the relevant class periods Papa Murphy’s did
15 not purchase telephone number lead lists and did not obtain telephone numbers via
16 skip tracing or contact consumers through any sort of referral programs. However,
17 the historical identity of regular or authorized users (consumers who actually
18 provided their mobile telephone numbers to Papa Murphy’s) of mobile telephones is
19 not possible for numerous reasons.

20 b. First, as my review of the consumer information data relevant to the SMS/text
21 programs indicates, there are no consistent reliable elements of data to which a
22 telephone number can be associated. Lacking are verified full and true names as well
23 as addresses. This leaves the telephone number itself, which of course does not reveal
24 the identity of the alleged recipient of a successful text message historically.

25 c. According to data published by Statistica regarding mobile telephone churn rate
26 between 2013 and 2016, the first quarter of 2014 saw a monthly churn rate of nearly

14 percent. Churn rates indicate the percentage of customers who ended their relationship with their then-current carriers. Additionally, these statistics only reported on the churn rates of the major carriers.⁴ Churn is an indicator that statistically, around 14 percent of major carrier customers (would be higher for all carriers) have moved on to different carriers since providing their telephone number to Papa Murphy's. Some consumers may also port their old telephone numbers to the new carrier but certainly not all consumers. There are several factors that may prevent consumers from porting their existing telephone number. For instance, authorized users of telephones within a family share plan, who are not the subscribers, would not be allowed to port to another carrier. This includes business-provided telephones, where the business / employer is the subscriber. Attempts to port numbers into an existing account with a different carrier may also be denied, as well as attempts to port numbers with a carrier that is not licensed in the consumer's area. These factors indicate that the reliable identification of consumers today, who may have received a text more than four years ago, is not possible.

Problems Ascertaining Historic Mobile Subscriber Information.

- **Name Directories:** As a preliminary matter, there is no available list of current or historical mobile telephone numbers (such as the White Pages or the 411-directory assistance databases for landlines). Some wireless carriers participate in a Caller Name ("CNAM") database. This facilitates the transmission of caller ID information similar to landline telephone services. The CNAM database is voluntary and subscribers must pay additional fees for this feature (which is usually bundled with other premium features). As a result, it is not universally available even among wireless carriers that offer the service. Another factor is carrier participation in the database—among the major carriers, AT&T, Sprint, T-Mobile, and Verizon are accounted for in this database, but Verizon

⁴ <https://www.statista.com/statistics/283511/average-monthly-churn-rate-top-wireless-carriers-us/> (Last accessed November 10, 2017)

1 Wireless has not been participating to date. Finally, CNAM is relevant only for current
 2 subscribers, and even then, the data is not completely reliable due to latency in updates
 3 and inaccurate information provided by the wireless carriers. I am unaware of any source
 4 for CNAM data from a historical perspective going back to 2013 or earlier.

5 • **Commercial ID Services:** While PossibleNOW, LexisNexis, Neustar, and others
 6 provide commercially available identification services, these do not provide reliably
 7 correct information. My research indicates that a significant percentage of the numbers
 8 in these databases provide no consumer name information. Additionally, in many
 9 instances the consumer information provided is either inaccurate or uses abbreviations
 10 and nicknames. The prevalence of family plans or friends-and-family plans, popular
 11 because there is no credit check for the additional users, also renders these databases
 12 ineffective as a reliable means to identify historical users as the databases often do not
 13 account for common users of the telephone number (*i.e.*, children, spouse, grandparents,
 14 even friends of the family, etc.).⁵

15 • **Mobile Telephone Number Reassignment:** In my experience, the name and
 16 address associated with a wireless telephone number today may not be the same person
 17 that owned the telephone number at a specified date in the past. Tens of millions of
 18 numbers are recycled each year.⁶ The high number of mobile telephone reassignments
 19 makes it difficult to reliably identify historical users of mobile telephone numbers. I am

20
 21 ⁵ A disclaimer on websites for such databases typically cautions the user along the following lines, “Due to the
 22 nature of the origin of public record information, the public records and commercially available data sources used
 23 in reports may contain errors. Source data is sometimes reported or entered inaccurately, processed poorly or
 24 incorrectly, and is generally not free from defect. This product or service aggregates and reports data, as provided
 25 by the public records and commercially available data sources, and is not the source of the data, nor is it a
 26 comprehensive compilation of the data. Before relying on any data, it should be independently verified.”

⁶ 2015 Omnibus Order, 30 FCC Rcd at 8077–78 (Pai, dissenting) (“[C]onsumers don’t preemptively contact every
 business to which they have given their number to inform them of the change. So even the most well-intentioned
 and well-informed business will sometimes call a number that’s been reassigned to a new person. After all, **over 37
 million telephone numbers are reassigned each year.** And no authoritative database—certainly not one
 maintained or overseen by the FCC, which has plenary authority over phone numbers—exists to ‘track all
 disconnected or reassigned telephone numbers’ or ‘link[] all consumer names with their telephone numbers.’ . . .
 [T]rial lawyers have sought to apply a strict liability standard on good-faith actors—so even if a company has no
 reason to know that it’s calling a wrong number, it’ll be liable.”).

1 not aware of any solution or database that addresses the challenges brought on by
2 reassigned mobile numbers. In other words, there is no database in existence today that
3 can reliably identify a prior user of a cellphone at a specific point in time in the proposed
4 time frame of October 13, 2013 to June 15, 2015 in this action. The current publicly
5 available databases are unreliable for a number of reasons, including because customer
6 records are often linked to the wrong mobile number and because these databases can
7 only account for subscriber information rather than common user information.

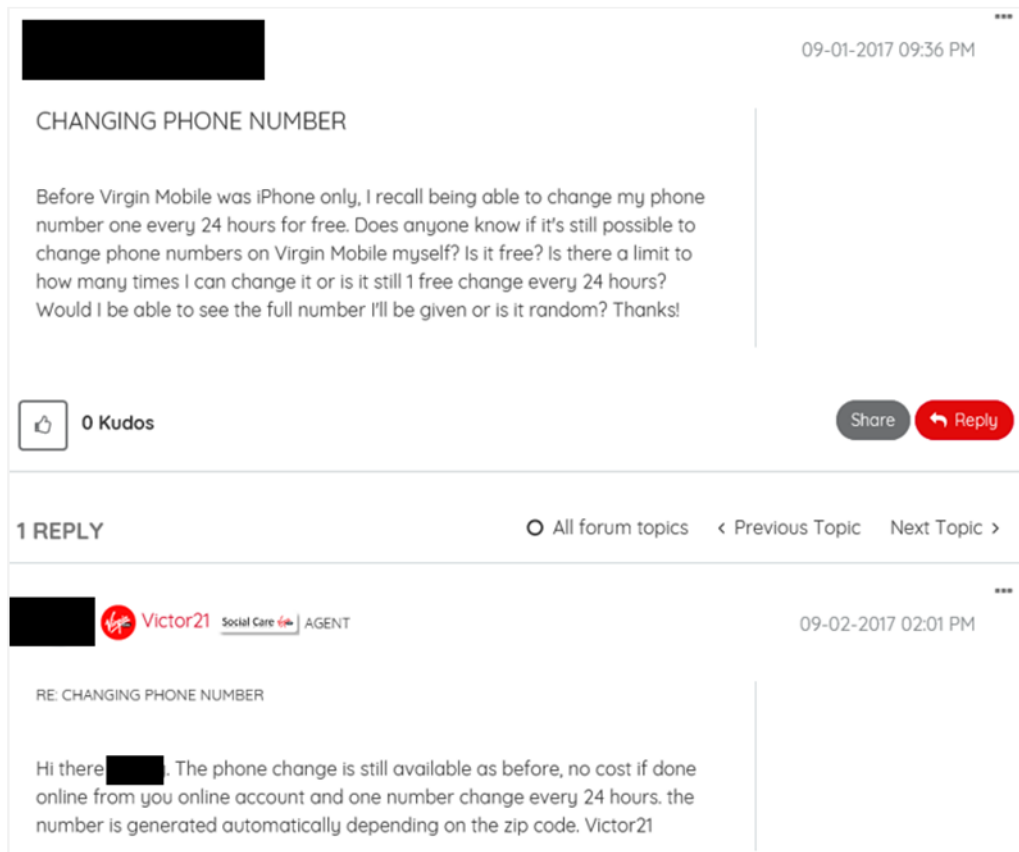
8 The FTC and FCC administration of the National Do Not Call (DNC) Registry
9 provides an example of the inability to reliably identify reassigned wireless numbers used
10 at a specific point in the past. The Do Not Call Improvement Act of 2007 became effective
11 in February of 2008. Previously, telephone numbers on the DNC registry expired after
12 five years. The Act changed this, so that numbers placed on the registry remain
13 permanently. When this change was made, the FTC and FCC implemented a “hygiene”
14 process whereby telephone numbers contained within the DNC registry that were
15 disconnected from the original subscriber and reassigned to a different subscriber name
16 as well as a different address are removed. CompliancePoint’s parent company,
17 PossibleNOW, Inc. is the subcontractor selected to perform this hygiene process.
18 However, the hygiene process ONLY removes land line (residential) telephone numbers,
19 as there is no reliably available data source to track disconnects and reassignments of
20 mobile telephone users. The FTC acknowledged this fact in its 2008 Report to Congress.
21 In relevant part, the FTC wrote, “Wireless carriers are not required to provide information
22 to the National Directory Assistance (NDA) related to their disconnected or reconnected
23 telephone numbers. FTC staff will continue to work with the subcontractor on ways of
24 addressing the accuracy of cellphone registrations.”⁷ This fact further evidences the
25 difficulty involved in accurately identifying users of mobile telephones.

26 ⁷ Discussion of the process to maintain the accuracy of the DNC Registry. Page 6, Do Not Call Improvement Act Report to Congress October 2008.

Another complication concerning the identification of cellphone subscribers is that many major mobile telephone carriers offer their subscribers the option to change their wireless number without changing the carrier, in some cases as often as every 24 hours.

Virgin Mobile⁸

Ability: Once every 24 hours. No fee.



⁸ <https://community.virginmobileusa.com/t5/iPhone/Changing-phone-number/td-p/12431> (Link last accessed November 9, 2017.)

Sprint⁹

Ability: Up to three (3) times in 30 days. No fee.

Change your phone number and/or address on Sprint.com

There may be occasions where you need to change your phone number. You can change your phone number to a different number anywhere Sprint provides service. There is no fee for changing your number when using My Sprint.

Review the restrictions below.

1. You cannot choose a specific number. A new number will be randomly assigned.
2. You cannot change your phone number more than 3 times in 30 days.
3. Once your phone number is changed, you cannot switch back to your current number.
4. You will need to set up a new voicemail account and all your saved voicemail messages will be lost.
5. Changing your phone number will remove block or allow lists associated with that number. You will need to manually set up these lists for your new number.
6. You cannot port over a number from another carrier through this self-service process.

Change your phone number

[⊕ Step by step instructions to change your phone number on sprint.com](#)

IMPORTANT:

Your phone will need to be programmed with your new phone number. Many of our phones program automatically over the air on our network.

1. Turn on your phone.
2. Wait a minute and then try to make a phone call. If you succeed, you are done.

If you cannot make a phone call, you will need to manually enter the information below to complete programming:

1. Master lock code
2. New phone number
3. MSID(IMS)

It may take up to 72 hours for the new phone number to display for Caller ID. **Please wait 15 minutes for your new number to appear on sprint.com.**

If you still cannot make calls after manual programming your phone, please chat with an agent at www.sprint.com/chat or visit a local retail store for programming assistance.

Last updated Fri Jul 07 2017

AT&T¹⁰

Ability: No frequency limitation listed. No fee within 30 days of activation.

\$36 change fee after 30 days.

⁹ <https://www.sprint.com/en/support/solutions/device/change-your-phone-number-area-code-or-address-on-sprint-com.html> (Link last accessed November 9, 2017.)

¹⁰ <https://www.att.com/esupport/article.html#!/wireless/KM1011568> (Link last accessed November 9, 2017.)

Change your wireless number

Learn how to get a new wireless number without changing your installment plan or contract.

Wireless

AT&T PREPAID



INSTRUCTIONS & INFORMATION

How to change your number

What to know before changing your wireless number

- You can change your number for free within 30 days of activation. After 30 days, there'll be a \$36 change fee charge.
- Your monthly service charge will be prorated between your old and new numbers.
- Write down any important voicemail messages tied to your old number, as they won't transfer.
- You need to create a new greeting for your new number.

Get a new number

- 1 Go to [Account & services](#) > **My wireless**.
- 2 Scroll and select the **device you want to transfer a number to** > **Manage device & features**.
- 3 Select **See more device options** > **Change a wireless number**.
- 4 Follow the prompts to get a new number.

After changing your number

Important details

- There isn't a feature to provide callers with your new number. Callers dialing your old number will hear: **The number you dialed is not a working number, please check the number and dial again.**

1 **Verizon**¹¹

2 Ability: No frequency limitation listed. No fee.

3 4 5 **My Verizon** 6 **Change Mobile Number FAQs**

7 Learn the steps to change your mobile number online and other top questions:

- 8 • [How long will it take?](#)
- 9 • Will I lose my [contacts, voicemail or text messages](#)?
- 10 • [Can I pick my number?](#)

11 **General Information**

12 [Expand All](#)

13 1. [How do I change my mobile number online?](#)

14 To change your mobile number online:

15 Note: Only an [Account Owner](#) or [Account Manager](#) can change a mobile number online. [Learn more about account access roles](#).

16 a. Go to the [Change Mobile Number page](#) in My Verizon.

17 Note: If you have a prepaid account, go to the [Prepaid Change Mobile Number](#) page and skip to step d.

18 b. If you have multiple lines on your account, select the mobile number you want to change and click **Next**.

19 c. Select **Get a new number**.

20 d. Enter the ZIP code for the area you live in or select a city and state for your new number from the dropdown menus.

21 Note: You may also have the option of porting in (i.e., transferring) an existing number from another service provider. For more information on porting, visit our [Local Number Portability FAQs](#). This option isn't available for prepaid accounts.

22 e. Click **Next**.

23 f. If prompted, select an area code and exchange number from the dropdown, and click **Next**.

24 Note: You will automatically be assigned the last 4 digits for your new number based on what's available.

25 g. If prompted, select a date for the changes to take effect and click **Next**.

26 Note: If you select to have the change effective today or pick a specific day before the first day of your next bill cycle, your bill will be [prorated](#). If you don't select the change to take effect today, it will take place at midnight ET of the selected day. This step isn't applicable for prepaid accounts.

h. Review your changes and click **Submit**.

Note: A confirmation page will display with further information and next steps.

You've successfully changed your mobile number online.

You can also watch our [How to Change Your Phone Number video](#) for instructions.

¹¹ <https://www.verizonwireless.com/support/change-mobile-number-faqs/> (Link last accessed November 9, 2017.)

T-Mobile¹²

Ability: No frequency limitation listed. No fee for Pay in Advance plans.

\$15 fee each time for other plans.

Learn how to change your phone number. There are a few reasons why you might want to change your wireless number, such as if you're receiving someone else's phone calls or if you recently moved.

Things to keep in mind:

- T-Mobile charges a \$15 fee to change your phone number. If you're on a Pay in Advance plan, you're exempt from this fee.
- Changing your mobile number will delete all voicemail messages. You'll need to set up a new voicemail box for your new number. See [phone how tos](#) for voicemail access steps.
- Phone number changes can take up to 4 hours to complete.
- Caller ID systems for landline carriers can take up to 3 days to show the correct calling information.
- It may take up to 3 days to be able to access [My T-Mobile](#) using your new mobile number.

To change your phone number, [contact T-Mobile Customer Service](#).

- **Subscriber-vs-User:** Even if there were reliable sources to determine the identity of subscribers from a historical perspective, this information does not definitively identify authorized users (who would be the recipients of the actual call or text), who may have provided prior express consent to call/text their mobile telephone numbers during the normal course of business. Wireless carriers may know the identity of the owner of the account (i.e., the subscriber) in which a telephone number is held, but often do not know the identity of the user of a telephone number in that account, if it is a multiline account. The reason for this is *none* of the main wireless carriers—AT&T, Verizon, T-Mobile, Sprint—require subscribers to provide the identities of each user on their account. In family plans, family members and/or friends share one wireless plan, and a single subscriber's name is associated with all the telephone numbers on the account. For

¹² <https://support.t-mobile.com/docs/DOC-2862> (Link last accessed November 9, 2017.)

1 example, I have five telephone numbers associated with my AT&T account, which are
2 assigned to the mobile telephones for myself, my spouse, my daughter, and my son-in-
3 law, and to my iPad. However, AT&T associates all of these telephone numbers with my
4 name, and does not even know the name of my spouse, daughter and son-in-law.

5 Similarly, many employers provide mobile devices to their employees which
6 could be used for personal as well as business purposes. The business or government
7 agency is the “subscriber” and is billed for the services, while the employees are
8 authorized users. Employees may be the called or texted parties and they have the ability
9 to provide prior express consent to the calls. Wireless carriers are unaware of the identity
10 of individual employees who are authorized users. These telephone numbers are also
11 subject to frequent reassignment to new users as employees migrate in, out, and around
12 these organizations.

13 • **Pre-paid Telephones:** Pre-paid telephone services, or “burner” phones, introduce
14 another difficulty in determining current as well as historical user information. A pre-paid
15 wireless account is one in which the customer may have a short-term relationship with
16 the wireless services provider and is not billed for service. Rather, the customer purchases
17 usage credits in advance, and fees are deducted from the customer’s account as it is used.
18 Pre-paid cellphones appeal to many consumers for many reasons. For example, one of
19 the great thing about pre-paid is consumers can switch at a moment's notice, no expensive
20 early termination fees. The flexibility to switch carriers or change cellphones at will
21 appeals to people who move around, especially those in the military who might be sent
22 overseas. If such consumers move and find that a different carrier offers better coverage,
23 they are not stuck with a contract.

24 Pre-paid plans also appeal to consumers who may not qualify for a two-year
25 contract because of credit issues. With a pre-paid plan, the carrier is not extending any
26

1 subsidy to the consumer, therefore they do not have to check if the consumer is a good
2 credit risk or not.

3 Parents of teens may use pre-paid plans to control minutes. It is a great way to
4 ensure that there are clear limits and zero chance of overage. Once the pre-paid amount
5 has been used up, the consumer is cut off. The consumer can always reload at any point,
6 but it is an easy way for parents to keep track of their child's usage.

7 The problem with accurately researching companies that offer, or offered at the
8 time period in question, pre-paid telephone services is that the carriers such as Boost or
9 Tracfone are really just mobile virtual network operators (MVNOs). In other words, they
10 run on a larger carrier's network and just brand it themselves. For example, Boost Mobile
11 runs on Sprint's network. When performing a network level search for a Boost mobile
12 number, it is going to show Sprint because that is the network actually being used.

13 The recipient number could have been a landline that more than four years back
14 was not set up for text-to-speech technology and bounced the incoming SMS into
15 unknown cyber space. Also, there is a lot of movement in the business arena of pre-paid
16 and wireless telephone carriers, which could account for these unknown networks. For
17 example, Cricket (Leap Wireless) was acquired by AT&T in 2014. In 2014 Sprint was
18 considering bringing back the remains of the Nextel brand it had turned off a year or two
19 earlier, when it turned off the iDEN network. In October 2010 Pocket Communications
20 announced a merger with Cricket Communications. In April 2012 U.S. Cellular and Alltel
21 Wireless announced that they had joined together to begin offering U Prepaid, a no
22 contract wireless service, in select Walmart Stores. Shenandoah Telecommunications
23 Company ("Shentel") acquired nTELOS earlier this year. Rural Cellular Corp. was
24 purchased by Verizon Wireless in January 2009. Trying to go back four or more years to
25 identify customers that most likely were never known to the pre-paid telephone carriers
26 in the first place, in my opinion, will not yield reliable, if any, results.

1 A central problem in identifying subscribers and users of pre-paid wireless
 2 numbers is that buyers of these services are generally not required to provide a name or
 3 any other identifying information to purchase the services. Several states have tried to
 4 enact laws to require buyers of these telephones to provide their names, however, I am
 5 unaware of any such legislation having been passed into law. Even if it had, that would
 6 be problematic because there are no verification procedures to ensure true names are
 7 given. So, at the end of the day, even if a certain pre-paid provider required information,
 8 because verification is often over the telephone, there is no way to ensure accurate
 9 subscriber information is provided. And because no traditional bill is generated, there is
 10 no incentive to provide accurate subscriber information. The often-used term “burner
 11 phone” encompasses this very issue.

12 It is also the case that pre-paid numbers do not always appear to be pre-paid. For
 13 example, I have researched and studied telephone numbers that were unquestionably
 14 known to be assigned to pre-paid cellphone providers recently that were scrubbed by
 15 running them through NPA/NXX data out of curiosity, just to see the results. The outcome
 16 described was that the results are highly unreliable, for example:

17 Tracfone often appears as Verizon or T-Mobile or Cingular

18 Boost Mobile often appears as Sprint or Nextel

19 Go Phone often appears as AT&T

20 Accordingly, the number of pre-paid numbers at issue may be much higher than what
 21 appears on the face of the relevant documentation. This is due to the aforementioned fact
 22 that most pre-paid phone service providers are actually providing services through other
 23 carrier networks.

24 • **Mobile Virtual Networks (MVNO):** Another layer of difficulty in determining
 25 historical user identities of mobile telephones is the increasingly common practice of
 26 “wholesaling.” Virgin Mobile, for example, actually provides all of its mobile subscriber

1 services through Sprint. Sprint wholesales bandwidth to Virgin Mobile. Therefore, Virgin
 2 Mobile subscribers are actually on the Sprint network, though Sprint would not have any
 3 information, historical or otherwise, pertaining to these subscribers), which further
 4 complicates the ability to reliably associate subscribers.

5 • **Skip Tracing:** Skip Tracing methods are sometimes employed, usually by
 6 creditors or collectors in an attempt to locate persons or specific information about
 7 persons, such as an updated address or name. Skip Tracers generally rely upon two basic
 8 techniques to find this information. The first is the Internet, where publicly available
 9 information includes social media sites and search engines, and the second is fee-based
 10 data mining vendors, such as Accurant, ChoicePoint, Locate Plus, and a host of others. In
 11 my experience, Internet-based mobile telephone identity services do not provide
 12 consistent, unequivocal, or reliable information regarding current or historical cellular
 13 telephone users.

14 • **Reverse Look-up:** As a preliminary matter, it is my experience that reverse look-
 15 up databases are not a reliable and consistent means to determine historic subscriber
 16 information. To determine the historic subscriber for a particular number one can run a
 17 reverse look-up through various databases (*i.e.*, Intelius, Whitepages, Yellowpages,
 18 Spokeo, 411.com) that provide such services.

19 Although I have attempted this test several times in the past with different service
 20 providers, for the purposes of this report, recently I again attempted to identify the user
 21 of a mobile telephone number with which I am very familiar. For this test I used
 22 www.peoplefinders.com. Similar to others, this website claimed to be able to locate
 23 “owners” of mobile telephones.¹³ I recently entered into the search query the mobile
 24 telephone number my spouse uses and has used for more than ten years on our family
 25 plan, where I am listed as the subscriber. The return search indicated that there was an
 26

¹³ See claims and testimonials at <https://www.peoplefinders.com/reverse-phone>.

1 available match of information; however, in order to review this information, I could
2 either join the service as a member for recurring monthly fees or I could pay a one-time
3 fee of \$3.95 to view this single record of information. I paid the \$3.95 to view the
4 information available for my spouse's mobile telephone, which is 770-843-XXXX. (See
5 Exhibit B). Below is a summary of the results:

Category	True Information	Reported Information
Owner/User	My Spouse	Ken Sponsler
Mobile Provider	AT&T	None Found
Address	Beverly Hills, FL	NE Atlanta
Email address	Bellsouth Account	None Found

12 My previous experience with these Internet mobile user identity services has
13 produced similar results. In my opinion, this source of identifying members of the class
14 is completely unreliable. Over the past four years, this is the fourth different reverse look-
15 up provider I have consulted, all with similar results of incorrect or no information. In my
16 opinion, this source of identifying members of the class is completely unreliable.

17 Such reverse look-up databases also list the telephone carrier for such numbers,
18 which can then be cross-referenced with the North American Numbering Plan
19 Administration (NANPA)—the organization that is responsible for assigning all
20 telephone numbers across North America. However, neither reverse look-up services nor
21 NANPA provide any information about the identities of previous subscribers to the same
22 number. In other words, while it may be possible to determine that Person A is the current
23 subscriber to a particular number, these tools do not make it possible to determine either
24 (a) how long Person A has been the subscriber, or (b) who the previous subscriber(s) to a
25 particular number might have been or (c) the identity of authorized users who may have
26 been the recipients of the call or text.

1 Reverse look-up databases will also often provide information that is
2 contradictory to or inconsistent with other similar databases. For example, it is often the
3 case that, for a given number, Database A will provide different information than
4 Database B. This is why reverse look-ups produce significant false positives.

5 • **Subpoena Telephone Carriers:** My experience in multiple TCPA cases
6 indicates that carrier responses to subpoenas are widely variable and thus will be an
7 unreliable means to identify class members across different carriers. AT&T, for example,
8 will not provide subscriber information without first advising subscribers and providing
9 them an opportunity to object. Before it will release any information / call detail records
10 (“CDRs”), it will contact every subscriber associated with the numbers that match the
11 parameters of the subpoena to inform them of the subpoena and their rights. AT&T
12 subscribers have up to fourteen days to reply. If AT&T receives the subscribers’ consent,
13 it will produce the record. If AT&T receives no reply, it will produce the record.
14 Subscribers, who object to the release of their CDRs, must file a Motion to Quash with
15 the respective courts. Depending on the location of the court (county, state, etc.) this can
16 be a quick or a very drawn-out process. My recent experience with carrier responses to
17 subpoena also reveals that some have refused to respond at all citing legal objections.
18 Even when carriers do respond, their information often does not account for authorized
19 users of telephones associated to an account. This factor, as noted above, is prevalent in
20 family shared plans as well as business or governmental issued telephones. Carriers will
21 only be aware of the primary account holder or subscriber but be completely unaware of
22 family, friend or employee users associated with these accounts. Carriers are also under
23 no obligation to maintain historical account records when subscribers have ported their
24 numbers to other carriers, which presents growing problems given the frequency with
25 which consumers change providers. Assuming it is even possible to issue a subpoena for
26 each and every telephone carrier to identify subscribers to the relevant telephone

1 numbers, this still leaves unanswered the question which telephone carrier serviced the
2 telephone numbers during the class period.

3 If and when telephone companies do respond to subpoenas, they provide the
4 information they are legally required to retrieve from archives at a price because they
5 have to dedicate employees and resources to that job, therefore, they generally charge for
6 this. Depending on the number of records and how far back they are told to search their
7 archives, the charges can be extremely, if not prohibitively, high. For example, AT&T
8 charges a one-time \$35.00 processing fee to produce CDRs under subpoena. On top of
9 that, it charges \$10.00 for each record for each month, i.e., if ten thousand (10,000)
10 records had to be produced for a twelve-month time period, the cost would be \$10 x
11 10,000 records x 12 months = \$1,200,000.00 (one million two hundred thousand dollars)
12 plus \$35.00 processing fee.

13 • **Text Messages to Landlines:** The evidence in this case includes several Excel
14 spreadsheets identified as “sent” data. I randomly selected one of these files for review.
15 The file I selected was “PM0000398 – sent_messages” - Excel. Row “H” is populated by
16 the identification of the “carrier” supposedly servicing the mobile telephone number
17 indicated in Row G of the spreadsheet. Of the 33,210 rows of data representing “sent”
18 texts, 9,425 carrier fields (row H) are blank. While it is unclear of the specific factors that
19 resulted in why these 9,425 fields are blank, there are several possible explanations that
20 would contribute to the unlikely reliable identification of the intended recipients. For
21 instance, similar to my experience in other SMS/text data analysis work, residential
22 landlines could have been forwarded into the text program. My research and experience
23 show that whether residential landlines are capable of receiving text messages (also
24 referred to as “Text-to-Speech”) widely varies today and more so back in the fall of 2013.
25 Depending on the carrier, there is a strong likelihood, especially in 2013 (see Pre-Paid
26 Telephones), when the messages at issue would have been transmitted, that text messages

1 sent to these residential numbers would disappear into a void without being delivered and
 2 without any notification to the sender. Obviously, this phenomenon would call into
 3 question whether those particular SMS/texts could have violated the TCPA. Additionally,
 4 it is possible that blank Row H fields indicate pre-paid or MVNO servicers instead of
 5 traditional mobile carriers. As explained in other sections of this report, these factors
 6 greatly increase the difficulty in reliably identifying intended recipients.

- 7 • **National Change of Address NCOA site (U.S. Postal Service)**: NCOA^{Link™} is
 8 a secure dataset of approximately 160 million change-of-addresses going back 48 months
 9 that enable mailers to update mailing lists with new addresses from individuals, families
 10 and businesses that have moved. The USPS[®] has introduced NCOA^{Link™} to replace
 11 NCOA and *FASTforward*[®] Mailing List Correction (MLC) services. Mailers were
 12 required by the USPS[®] to switch to the new NCOA^{Link™} technology instead of National
 13 Change of Address (NCOA) on October 1, 2004 or replace *FASTforward*[®] MLC by
 14 October 1, 2005. In other words, even in the unlikely event that names and addresses
 15 could be determined for the proposed classes at the time of this report, the U.S. Postal
 16 Service's database only goes back 48 months or four years and would no longer include
 17 more than one month of address changes because the time frame exceeds those 48
 18 months. And even then, this process presents a host of problems: It is estimated that **only**
 19 **66.9 percent of mail is deliverable as addressed**. The remaining percentage has some
 20 form of addressing deficiency which could affect deliverability. Endorsed mail and First-
 21 Class mail can be forwarded or returned to the mailer, Standard Mail[™] A class is
 22 normally discarded. NCOALink[™] will reduce the amount of undeliverable mail by
 23 Address Standardization and ZIP[™] Correction as well as Move Update, but will not
 24 completely eliminate undeliverable mail. Some examples of returned mail
 25 NCOALink[™] not corrected are:
 26 - Someone who moves and does not notify the United States Postal Service[®].

- The match to the COA file is not good enough to meet United States Postal Service® requirements for licensees to provide a forwarding address.
- Someone who has moved and filled out the address change form, but the information has not yet been added to the **NCOA^{LinkTM}** database.
- Someone who has moved and filled out the address change form, but the information never added to the **NCOA^{LinkTM}** (e.g. data quality issues)
- **NCOA^{LinkTM}** processing does not validate name and address information on your database. The **NCOA^{LinkTM}** database contains Change-of-Address information only. If a person or company files a change of address with the United States Postal Service® the information is maintained on the **NCOA^{LinkTM}** database for 48 months. If a person or company does not file a change of address and the carrier does not file a "Moved – Left No Address" it does not appear on the **NCOA^{LinkTM}** database. Additional reasons a person/company would not be maintained on the **NCOA^{LinkTM}** database are:
 - The person/company still lives at the address on user's database.
 - The person/company may have filed a temporary move (for example a college student moves home for the summer).
 - Person may be deceased.
- **NCOA^{LinkTM}** will not correct spelling errors in user's names or addresses. Address Standardization will standardize user's addresses to postal regulations and may also correct some street name misspellings. **DSF2TM** also has the ability to correct misspelled street names.

Summary of Opinions: There are no objective and administratively feasible means to reliably identify subscribers or authorized users of mobile telephones from a historical perspective. While the documents I have been provided reflect the telephone numbers and in some cases the telephone carriers of the proposed class members during the relevant time period

1 (with the start date of both suggested class periods stretching back more than four years), there
2 is no reliable way at this point to identify the called parties because it is impossible to identify
3 who were the subscribers and authorized users at the time. Accordingly, it is my opinion that the
4 members of the putative class at issue in this case cannot be reliably identified through use of
5 administratively feasible and objective procedures.

6 **X. Reservation of Right to Amend**

7 I reserve the right to amend this report based on information received after issuance of
8 the same. I declare under penalty of perjury under the laws of the United States that the foregoing
9 is true and correct and this declaration was executed on this 22nd day of November, 2017 at
10 Beverly Hills, Florida.

11
12
13
14 

15 _____
Ken Sponsler

EXHIBIT A

EXHIBIT A

DECLARATION OF KEN SPONSLER IN SUPPORT
OF RESPONSE TO MOTION FOR CLASS
CERTIFICATION - 1
No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800



Curriculum Vitae

Kenneth R. Sponsler, CECP, CIPP/US
CompliancePoint
4400 River Green Parkway, Suite 100
Duluth, GA 30096
(770) 255-1020
www.compliancepoint.com
ksponsler@compliancepoint.com

Current Employment:

Senior Vice President of CompliancePoint, Inc., a global professional services firm specializing in consulting and audit services.

Education:

120 hours of undergraduate study; 4.0 GPA (no degree conferred) University of Maryland; Troy University; City College of Chicago; Park University.

Registrations, Licenses, Certifications:

- Customer Engagement Certified Professional (CECP) by the Professional Association for Customer Engagement (PACE)
- Certified Information Privacy Professional (CIPP/US) by the International Association of Privacy Professionals (IAPP)
- Certified American Teleservices Association Self-Regulatory Organization Auditor (ATASRO)

Specialized Training:

- U.S. Army Command Sergeant Major Course; First in Class
- Advanced Non-Commissioned Officers' Course; Distinguished Graduate

Professional Experience:

Seventeen years of general consultation practice concerning U.S. federal and state telemarketing operational compliance with a variety of national and global companies. Provides regulatory and operational compliance consulting services for telemarketing, email, mail, fax, SMS/text communications, and debt collection matters. Ken Sponsler has been designated as an "expert" in U.S. Federal District

Court and provided expert opinions in numerous TCPA and TSR-related matters. CompliancePoint specializes in seller and telemarketer compliance, call center operations, compliance assessments, audits, and forensic call and call abandonment data analysis, with a focus on operational assessments, risk identification, gap analysis, and implementation of compliance policies, procedures and strategies. The consulting practice includes seller/service provider relations, contracting, record keeping, training, monitoring, and enforcement. Effective November 1, 2017 Ken serves as the Vice Chairman of the board and member of the Executive Committee of the National Board of Directors at PACE. Additionally, Ken has provided consulting services to government and military organizations implementing U.S. Army modularity design and organizational changes. A retired U.S. Army Command Sergeant Major, he concluded his career as the Senior Enlisted Leader of the 3rd Infantry Division, leading a 23,400-man elite combat team.

Publications and Webinars (including CompliancePoint products):

- *2016 Compliance Review - 2017 Forecast, Regulatory Updates, Feb 2017*
- *Text Message Compliance Webinar – September 2016*
- *2014 Compliance Review - 2015 Forecast, Regulatory Updates, Feb 2015*
- *2013 Compliance Review - 2014 Forecast, Regulatory Updates, Feb 2014*
- *Strategies For Compliance With New TCPA Requirements, March 2012*
- *Employment Placement Verification, February 2012*
- *2011 Compliance Legislation Review & 2012 Forecast, January 2012*
- *What Impacts Will The TCPA Changes Have On Your Business? Feb 2012*
- *Periodic Regulatory Information Charts*
- *Monthly Compliance Article for customer distribution (2007 – 2014)*

Awards/Honors:

- PACE 2016 Pioneer Award for the Difference Ken's Dedication and Support has made with PACE and the Industry, awarded by Professional Association of Customer Engagement
- PACE 2014 Chairman's Award for Distinguished Leadership and Service to the Industry
- Hewlett Packard Vendor of the Quarter Award (to CompliancePoint), 2007
- 18 separate personal awards by the US Army, including the Legion of Merit

Memberships:

- *American Teleservices Association* (now PACE)
 - Member, National Board of Directors
 - Member, Self-Regulatory Organization Trustee
 - Federal Legislative Committee Member
 - State legislative Committee Member
 - “Do Not Call” Implementation Committee Member
 - Compliance Officer’s Forum Member
- *Professional Association of Customer Engagement, Southeast Chapter*
 - Member, Board of Directors
- *International Association of Privacy Professionals*
 - Consumer Marketing Working Group
- *Direct Marketing Association*
 - Teleservices Committee Member

Presentations and Colloquies:

Frequent speaker at industry events, including PACE Annual Convention; Direct Marketing Association Teleservices Conference; College of Information Assurance Professional’s Governance; Risk and Compliance Summit; Noble Users’ Conference; and Quarterly Compliance Focused Webinar Presentations.

EXHIBIT B

EXHIBIT B

DECLARATION OF KEN SPONSLER IN SUPPORT
OF RESPONSE TO MOTION FOR CLASS
CERTIFICATION - 5
No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800



Reverse Phone Report for (770) 843- [REDACTED]

SPONSLER KENPhone Number:
(770) 843- [REDACTED]

Address:

[Background Check Report](#)[Criminal Records Check](#)

Phone Number Historical Records

Name:
SPONSLER KENPhone Numbers:
(770) 843- [REDACTED]

Relatives/Associates:

AKAs:

* [Background Check Report](#)* [Criminal Records Check](#)Name:
KEN SPONSLERCurrent Address:
Atlanta Northeast, GAPhone Numbers:
(770) 843- [REDACTED]

Relatives/Associates:

AKAs:

* [Background Check Report](#)* [Criminal Records Check](#)

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DECLARATION OF KEN SPONSLER IN SUPPORT
OF RESPONSE TO MOTION FOR CLASS
CERTIFICATION - 6
No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800

EXHIBIT C

EXHIBIT C

DECLARATION OF KEN SPONSLER IN SUPPORT
OF RESPONSE TO MOTION FOR CLASS
CERTIFICATION - 7
No. 3:15-cv-05307-RBL

DLA Piper LLP (US)
701 Fifth Avenue, Suite 7000
Seattle, WA 98104-7044 | Tel: 206.839.4800

Exhibit C – Documents Reviewed by Ken Sponsler

- Plaintiff's First Amended Class Action Complaint; Document 93; January 9, 2017
 - Exhibit A
- Declaration of Verkhovskaya, Anya; Document 137; October 26, 2017
 - Exhibit A; Document 137-1; Verkhovskaya Résumé
 - Exhibit B, Document 137-2; Verkhovskaya's Representative List of TCPA Cases
 - Exhibit C; Document 137-3; Cases in Which Verkhovskaya Has Given Deposition or Trial Testimony
 - Exhibit D; Document 137-4; Source Files (85 pages)
 - Exhibit E; Document 137-5; Representative List of Cellular Identification Cases
 - Exhibit F; Document 137-6; Representative List of Reverse-Append Cases
 - Exhibit G; Document 137-7; Screenshot by statista "Market share of wireless subscriptions held by carriers in the U.S. from 1st quarter 2011 to 1st quarter 2017"
- Declaration of Brawley, Andrew; Document 21; September 24, 2015
- Stipulated Motion and Protective Order; Document 64
- Sample Text Data Provided for Expert Review
 - Phizzle Samples
 - Waterfall Samples

CERTIFICATE OF SERVICE

I hereby certify that on November 22, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Anthony Todaro

Anthony Todaro, WSBA No. 30391

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